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AMENDED IN ASSEMBLY MAY 5, 2009

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AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1160**

**Introduced by Assembly Member Fong**

(Principal coauthor: Senator Cedillo)

**(Coauthors: Assembly Members Coto, Eng, Fuentes, Furutani,  
Lieu, and Torres Nava, Torres, and Tran)**

(Coauthor: Senator Yee)

February 27, 2009

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An act to ~~amend Section 1632 of~~ *add Section 1632.5 to* the Civil Code, relating to contracts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as amended, Fong. Contracts: translation.

Existing law requires a person in a trade or business who negotiates specified contracts or agreements primarily in the languages of Spanish, Chinese, Tagalog, Vietnamese, or Korean to deliver to the other party, prior to execution of the contract or agreement, a translation of the contract or agreement in the applicable foreign language, except as specified. Under existing law, failure to comply with these provisions entitles the aggrieved party to rescind the contract or agreement. Under existing law, these provisions apply to specified loans or extensions of

credit subject to the Industrial Loan Law and the California Finance Lenders Law.

This bill would expand the scope of those provisions to ~~instead require any person in a trade or business who, in the course of entering into any of the specified contracts or agreements, negotiates any material term in those languages~~ *require a supervised financial organization, as defined, that negotiates primarily in those languages in the course of entering into a contract or agreement for a loan or extension of credit secured by residential real property*, to deliver a translation, as described above, or a translation of one or more of the approved disclosures or forms, as specified. ~~The bill would also make specified translation requirements applicable to loans or extensions of credit secured by real property and leases, subleases, and rental contracts or agreements, as specified. The bill would provide for administrative penalties against specified licensed persons for violations of these provisions. The bill would require the Department of Corporations and the Department of Financial Institutions to create new forms for these purposes based on specified forms of the Department of Real Estate. The bill would exempt federally chartered banks and credit unions from these provisions, as provided.~~

These provisions would ~~be become~~ operative beginning ~~60 on July 1, 2010, or 90 days after issuance of the forms, as provided, or on July 1, 2010, whichever is occurs~~ later.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1632.5 is added to the Civil Code, to read:
- 2     1632.5. (a) A supervised financial organization that negotiates
- 3     primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
- 4     whether orally or in writing, in the course of entering into a
- 5     contract or agreement for a loan or extension of credit secured by
- 6     residential real property, shall deliver to the other party to that
- 7     contract or agreement prior to the execution of the contract or
- 8     agreement the form described in subdivision (i) for that language.
- 9     (b) For purposes of this section:
- 10    (1) "Contract" or "agreement" shall have the same meaning
- 11    as defined in subdivision (g) of Section 1632.

1     (2) “Supervised financial organization” means a bank, savings  
2 association, as defined in Section 5102 of the Financial Code,  
3 credit union, or holding company, affiliate, or subsidiary thereof,  
4 or any person subject to Division 7 (commencing with Section  
5 18000), Division 9 (commencing with Section 22000), or Division  
6 20 (commencing with Section 50000) of the Financial Code.

7     (c) With respect to a contract or agreement for a loan or  
8 extension of credit secured by residential real property as  
9 described in subdivision (a), a supervised financial organization  
10 that complies with this section shall be deemed in compliance with  
11 Section 1632.

12     (d) The supervised financial organization shall provide the form  
13 to the borrower no later than three business days after receipt of  
14 the written application, and if any of the loan terms summarized  
15 materially change after provision of the translation but prior to  
16 consummation of the loan, the supervised financial organization  
17 shall provide an updated version of the form prior to consummation  
18 of the loan.

19     (e) (1) This section does not apply to a supervised financial  
20 organization that negotiates primarily in a language other than  
21 English, as described by subdivision (a), if the party with whom  
22 the supervised financial organization is negotiating, negotiates  
23 the terms of the contract through his or her own interpreter.

24     (2) For purposes of this subdivision, “his or her own  
25 interpreter” means a person, not a minor, able to speak fluently  
26 and read with full understanding both the English language and  
27 one of the languages specified in subdivision (a) that is the  
28 language in which the contract was negotiated, who is not  
29 employed by, and whose services are not made available through,  
30 the person engaged in the trade or business.

31     (f) Notwithstanding subdivision (a), a translation may retain  
32 any of the following elements of the executed English-language  
33 contract or agreement without translation:

34     (1) Names and titles of individuals and other persons.

35     (2) Addresses, brand names, trade names, trademarks, or  
36 registered service marks.

37     (3) Full or abbreviated designations of the make and model of  
38 goods or services.

39     (4) Alphanumeric codes.

1     (5) *Individual words or expressions having no generally*  
2     *accepted non-English translation.*

3     (g) *The terms of the contract or agreement which is executed*  
4     *in the English language shall determine the rights and obligations*  
5     *of the parties. However, the translation of the contract or forms*  
6     *required by subdivision (a) shall be admissible in evidence only*  
7     *to show that no contract was entered into because of a substantial*  
8     *difference in the material terms and conditions of the contract and*  
9     *the translation.*

10    (h) (1) *A licensing agency may, by order, after appropriate*  
11    *notice and opportunity for hearing, levy administrative penalties*  
12    *against a supervised financial organization that violates any*  
13    *provision of this section, and the supervised financial organization*  
14    *may be liable for administrative penalties, up to the amounts of*  
15    *two thousand five hundred dollars (\$2,500) for the first violation,*  
16    *five thousand dollars (\$5,000) for the second violation, and ten*  
17    *thousand dollars (\$10,000) for each subsequent violation. Except*  
18    *for licensing agencies exempt from the provisions of the*  
19    *Administrative Procedure Act, any hearing shall be held in*  
20    *accordance with the Administrative Procedure Act (Chapter 5*  
21    *(commencing with Section 11500) of Part 1 of Division 3 of Title*  
22    *2 of the Government Code), and the licensing agency shall have*  
23    *all the powers granted under that act.*

24    (2) *A licensing agency may exercise any and all authority and*  
25    *powers available to it under any other provisions of law to*  
26    *administer and enforce this section, including, but not limited to,*  
27    *investigating and examining the licensed person's books and*  
28    *records, and charging and collecting the reasonable costs for these*  
29    *activities. The licensing agency shall not charge a licensed person*  
30    *twice for the same service. Any civil, criminal, and administrative*  
31    *authority and remedies available to the licensing agency pursuant*  
32    *to its licensing law may be sought and employed in any*  
33    *combination deemed advisable by the licensing agency to enforce*  
34    *the provisions of this section.*

35    (3) *Any supervised financial organization that violates any*  
36    *provision of this section shall be deemed to have violated its*  
37    *licensing law.*

38    (4) *Nothing in this section shall be construed to impair or*  
39    *impede the Attorney General from bringing an action to enforce*  
40    *this division.*

1     (i) *The Department of Corporations and the Department of*  
2     *Financial Institutions shall create a form to be made available in*  
3     *each of the languages set forth in subdivision (a) for use by a*  
4     *supervised financial organization to summarize the terms of a*  
5     *mortgage loan pursuant to subdivision (a). In creating the forms,*  
6     *the Department of Corporations and the Department of Financial*  
7     *Institutions may use as guidance the United States Department of*  
8     *Housing and Urban Development's Good Faith Estimate disclosure*  
9     *form.*

10    (j) *This section shall not apply to federally chartered banks,*  
11    *credit unions, savings banks, or thrifts.*

12    SEC. 2. *This section shall become operative beginning on July*  
13    *1, 2010, or 90 days following the issuance of forms by both the*  
14    *Department of Corporations and the Department of Financial*  
15    *Institutions pursuant to subdivision (i), whichever occurs later.*

16    SECTION 1. ~~Section 1632 of the Civil Code, as amended by~~  
17    ~~Section 1 of Chapter 278 of the Statutes of 2008, is amended to~~  
18    ~~read:~~

19    ~~1632. (a) The Legislature hereby finds and declares all of the~~  
20    ~~following:~~

21    ~~(1) This section was enacted in 1976 to increase consumer~~  
22    ~~information and protections for the state's sizeable and growing~~  
23    ~~Spanish-speaking population.~~

24    ~~(2) Since 1976, the state's population has become increasingly~~  
25    ~~diverse and the number of Californians who speak languages other~~  
26    ~~than English as their primary language at home has increased~~  
27    ~~dramatically.~~

28    ~~(3) According to data from the United States Census of 2000,~~  
29    ~~of the more than 12 million Californians who speak a language~~  
30    ~~other than English in the home, approximately 4.3 million speak~~  
31    ~~an Asian dialect or another language other than Spanish. The top~~  
32    ~~five languages other than English most widely spoken by~~  
33    ~~Californians in their homes are Spanish, Chinese, Tagalog,~~  
34    ~~Vietnamese, and Korean. Together, these languages are spoken~~  
35    ~~by approximately 83 percent of all Californians who speak a~~  
36    ~~language other than English in their homes.~~

37    ~~(b) Any person engaged in a trade or business who in the course~~  
38    ~~of entering into any of the contracts or agreements listed in~~  
39    ~~paragraphs (1) to (7), inclusive, of this subdivision and negotiates~~  
40    ~~primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,~~

1 whether orally or in writing, shall deliver to the other party to the  
2 contract or agreement and prior to the execution thereof, either (1)  
3 a translation of the contract or agreement in the language in which  
4 the contract or agreement was negotiated, which includes a  
5 translation of every term and condition in that contract or  
6 agreement, or (2) a translation of one or more of the approved  
7 disclosures, forms, or both discussed in subdivisions (c) to (e);  
8 inclusive, and (m), as applicable to the specific contract or  
9 agreement at issue.

10 (1) A contract or agreement subject to the provisions of Title 2  
11 (commencing with Section 1801) of, and Chapter 2b (commencing  
12 with Section 2981) and Chapter 2d (commencing with Section  
13 2985.7) of Title 14 of, Part 4 of Division 3.

14 (2) A loan or extension of credit secured other than by real  
15 property, or unsecured, for use primarily for personal, family or  
16 household purposes.

17 (3) A lease, sublease, rental contract or agreement, or other term  
18 of tenancy contract or agreement, for a period of longer than one  
19 month, covering a dwelling, an apartment, or mobilehome, or other  
20 dwelling unit normally occupied as a residence.

21 (4) A loan or extension of credit for use primarily for personal,  
22 family or household purposes where the loan or extension of credit  
23 is subject to the provisions of Article 7 (commencing with Section  
24 10240) of Chapter 3 of Part 1 of Division 4 of the Business and  
25 Professions Code, or is made by a supervised financial  
26 organization.

27 (5) Notwithstanding paragraph (2), a reverse mortgage as  
28 described in Chapter 8 (commencing with Section 1923) of Title  
29 4 of Part 4 of Division 3.

30 (6) A contract or agreement, containing a statement of fees or  
31 charges, entered into for the purpose of obtaining legal services,  
32 when the person who is engaged in business is currently licensed  
33 to practice law pursuant to Chapter 4 (commencing with Section  
34 6000) of Division 3 of the Business and Professions Code.

35 (7) This section shall not apply to federally chartered banks or  
36 credit unions.

37 (e) For a loan subject to this part and to Article 7 (commencing  
38 with Section 10240) of Chapter 3 of Part 1 of Division 4 of the  
39 Business and Professions Code, the delivery of a translation of the  
40 statements, disclosures, or both to the borrower required by Section

1 ~~10240 or 10241 of the Business and Professions Code in any of~~  
2 ~~the languages specified in subdivision (b) in which the contract or~~  
3 ~~agreement was negotiated, is in compliance with subdivision (b).~~

4 ~~(d) For a loan or extension of credit secured other than by real~~  
5 ~~property, or unsecured for use primarily for personal, family, or~~  
6 ~~household purposes, delivery by a supervised financial organization~~  
7 ~~of a translation of the disclosures required by Regulation M or~~  
8 ~~Regulation Z, and, if applicable, Division 7 (commencing with~~  
9 ~~Section 18000) or Division 9 (commencing with Section 22000)~~  
10 ~~of the Financial Code in any of the languages specified in~~  
11 ~~subdivision (b) in which the contract or agreement was negotiated,~~  
12 ~~prior to the execution of the contract or agreement, is in compliance~~  
13 ~~with subdivision (b).~~

14 ~~(1) “Regulation M” and “Regulation Z” mean any rule,~~  
15 ~~regulation, or interpretation promulgated by the Board of~~  
16 ~~Governors of the Federal Reserve System and any interpretation~~  
17 ~~or approval issued by an official or employee duly authorized by~~  
18 ~~the board to issue interpretations or approvals dealing with,~~  
19 ~~respectively, consumer leasing or consumer lending, pursuant to~~  
20 ~~the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.~~  
21 ~~1601 et seq.).~~

22 ~~(2) As used in this section, “supervised financial organization”~~  
23 ~~means a bank, savings association as defined in Section 5102 of~~  
24 ~~the Financial Code, credit union, or holding company, affiliate, or~~  
25 ~~subsidiary thereof, or any person subject to Article 7 (commencing~~  
26 ~~with Section 10240) of Chapter 3 of Part 1 of Division 4 of the~~  
27 ~~Business and Professions Code, or Division 7 (commencing with~~  
28 ~~Section 18000) or Division 9 (commencing with Section 22000),~~  
29 ~~or Division 20 (commencing with Section 50000) of the Financial~~  
30 ~~Code.~~

31 ~~(e) For a loan or extension of credit secured by real property~~  
32 ~~made by a supervised financial organization, as described in~~  
33 ~~paragraph (4) of subdivision (b), delivery of the form disclosures~~  
34 ~~described in subdivision (m) is in compliance with subdivision~~  
35 ~~(b). Delivery of such disclosures is required whether or not the~~  
36 ~~transaction is also subject to the requirements of Article 7~~  
37 ~~(commencing with Section 10240) of Chapter 3 of Part 1 of~~  
38 ~~Division 4 of the Business and Professions Code, and subdivision~~  
39 ~~(e) of this section.~~

1     ~~The supervised financial organization shall provide the forms~~  
2     ~~to the borrower no later than seven calendar days before closing,~~  
3     ~~and, if any of the loan terms summarized change after provision~~  
4     ~~of the translation but prior to consummation of the loan, the~~  
5     ~~supervised financial organization shall provide an updated version~~  
6     ~~of the forms before closing.~~

7     ~~(f) At the time and place where an applicable contract or~~  
8     ~~agreement is executed, a notice in the language that the contract~~  
9     ~~or agreement was negotiated, shall be clearly and conspicuously~~  
10    ~~displayed in an unobstructed view, that states the translation~~  
11    ~~requirements in subdivision (b). If the person does business at~~  
12    ~~more than one location or branch, the requirements of this section~~  
13    ~~shall apply only with respect to the location or branch at which~~  
14    ~~the language in which the contract or agreement was negotiated~~  
15    ~~is used.~~

16    ~~(g) At the time and place where a lease, sublease, or rental~~  
17    ~~contract or agreement described in subdivision (b) is executed,~~  
18    ~~notice in any of the languages specified in subdivision (b), in which~~  
19    ~~the contract or agreement was negotiated, shall be provided to the~~  
20    ~~lessee or tenant to the effect that the person described in~~  
21    ~~subdivision (b) is required to provide a contract or agreement in~~  
22    ~~the language in which the contractor agreement was negotiated,~~  
23    ~~or a translation of the disclosure required by law in the language~~  
24    ~~in which the contract or agreement was negotiated, as the case~~  
25    ~~may be.~~

26    ~~(h) (1) As used in this section, “contract” or “agreement,” means~~  
27    ~~the document creating the rights and obligations of the parties and~~  
28    ~~includes any subsequent document making substantial changes in~~  
29    ~~the rights and obligations of the parties. “Contract” or “agreement”~~  
30    ~~does not include any subsequent documents authorized or~~  
31    ~~contemplated by the original document such as periodic statements,~~  
32    ~~sales slips or invoices representing purchases made pursuant to a~~  
33    ~~credit card agreement, a retail installment contract or account or~~  
34    ~~other revolving sales or loan account, memoranda of purchases in~~  
35    ~~an add-on sale, or refinancing of a purchase as provided by, or~~  
36    ~~pursuant to, the original document.~~

37    ~~(2) “Contract” or “agreement” does not include a home~~  
38    ~~improvement contract as defined in Sections 7151.2 and 7159 of~~  
39    ~~the Business and Professions Code, nor does it include plans,~~  
40    ~~specifications, description of work to be done and materials to be~~



1 used, or collateral security taken or to be taken for the retail buyer's  
2 obligation contained in a contract for the installation of goods by  
3 a contractor licensed pursuant to Chapter 9 (commencing with  
4 Section 7000) of Division 3 of the Business and Professions Code,  
5 if the home improvement contract or installation contract is  
6 otherwise a part of a contract described in subdivision (b).

7 (3) Matters ordinarily incorporated by reference in contracts or  
8 agreements as described in paragraph (3) of subdivision (b),  
9 including, but not limited to, rules and regulations governing a  
10 tenancy and inventories of furnishings to be provided by the person  
11 described in subdivision (b), are not included in the term "contract"  
12 or "agreement."

13 (i) (1) This section does not apply to any person engaged in a  
14 trade or business who negotiates primarily in a language other than  
15 English, as described by subdivision (b), if the party with whom  
16 he or she is negotiating is a buyer of goods or services, or receives  
17 a loan or extension of credit, or enters an agreement obligating  
18 himself or herself as a tenant, lessee, or sublessee, or similarly  
19 obligates himself or herself by contract or lease, and the party  
20 negotiates the terms of the contract, lease, or other obligation  
21 through his or her own interpreter.

22 (2) As used in this subdivision, "his or her own interpreter"  
23 means a person, not a minor, able to speak fluently and read with  
24 full understanding both the English language and any of the  
25 languages specified in subdivision (b) in which the contract or  
26 agreement was negotiated, and who is not employed by, and whose  
27 services are not made available through, the person engaged in the  
28 trade or business.

29 (j) Notwithstanding subdivision (b), a translation may retain the  
30 following elements of the executed English-language contract or  
31 agreement without translation: names and titles of individuals and  
32 other persons, addresses, brand names, trade names, trademarks,  
33 registered service marks, full or abbreviated designations of the  
34 make and model of goods or services, alphanumeric codes,  
35 numerals, dollar amounts expressed in numerals, dates, and  
36 individual words or expressions having no generally accepted  
37 non-English translation.

38 (k) The terms of the contract or agreement which is executed  
39 in the English language shall determine the rights and obligations  
40 of the parties. However, the translation of the contract or the

1 disclosures required by subdivisions (c) to (e), inclusive, and (m);  
2 in any of the languages specified in subdivision (b) in which the  
3 contract or agreement was negotiated shall be admissible in  
4 evidence to show that no contract was entered into because of a  
5 substantial difference in the material terms and conditions of the  
6 contract and the translation.

7 (l) (1) “Licensed person” means a real estate broker licensed  
8 under the Real Estate Law (Part 1 (commencing with Section  
9 10000) of Division 4 of the Business and Professions Code), a  
10 finance lender or broker licensed under the California Finance  
11 Lenders Law (Division 9 (commencing with Section 22000) of  
12 the Financial Code), a residential mortgage lender licensed under  
13 the California Residential Mortgage Lending Act (Division 20  
14 (commencing with Section 50000) of the Financial Code), a  
15 commercial or industrial bank organized under the Banking Law  
16 (Division 1 (commencing with Section 99) of the Financial Code),  
17 a savings association organized under the Savings Association  
18 Law (Division 2 (commencing with Section 5000) of the Financial  
19 Code), and a credit union organized under the California Credit  
20 Union Law (Division 5 (commencing with Section 14000) of the  
21 Financial Code).

22 (2) (A) A licensing agency may, after appropriate notice and  
23 opportunity for hearing, by order, levy administrative penalties  
24 against a person who violates any provision of this section, and  
25 the person shall be liable for administrative penalties, up to the  
26 amounts of two thousand five hundred dollars (\$2,500) for the first  
27 violation, five thousand dollars (\$5,000) for the second violation,  
28 and ten thousand dollars (\$10,000) for each subsequent violation.  
29 Except for licensing agencies exempt from the provisions of the  
30 Administrative Procedure Act, any hearing shall be held in  
31 accordance with the Administrative Procedure Act (Chapter 5  
32 (commencing with Section 11500) of Part 1 of Division 3 of Title  
33 2 of the Government Code), and the licensing agency shall have  
34 all the powers granted under that act.

35 (B) A licensing agency may exercise any and all authority and  
36 powers available to it under any other provisions of law, to  
37 administer and enforce this section, including, but not limited to,  
38 investigating and examining the licensed person’s books and  
39 records, and charging and collecting the reasonable costs for these  
40 activities. The licensing agency shall not charge a licensed person

1 twice for the same service. Any civil, criminal, and administrative  
2 authority and remedies available to the licensing agency pursuant  
3 to its licensing law may be sought and employed in any  
4 combination deemed advisable by the licensing agency to enforce  
5 the provisions of this section.

6 ~~(C) Any licensed person who violates any provision of this~~  
7 ~~section shall be deemed to have violated that person's licensing~~  
8 ~~law.~~

9 ~~(D) Nothing in this section shall be construed to impair or~~  
10 ~~impede the Attorney General from bringing an action to enforce~~  
11 ~~this division.~~

12 ~~(m) The Department of Corporations and the Department of~~  
13 ~~Financial Institutions shall create forms to be made available in~~  
14 ~~each of the languages set forth in subdivision (b) for use by a~~  
15 ~~supervised financial organization to summarize the terms of a~~  
16 ~~mortgage loan pursuant to subdivision (c). In creating the forms,~~  
17 ~~the Department of Corporations and the Department of Financial~~  
18 ~~Institutions may modify, or use as guidance, the Department of~~  
19 ~~Real Estate's Forms 883 and 885.~~

20 ~~SEC. 2. The requirements applying to supervised financial~~  
21 ~~organizations, as well as all other amendments herein, shall be~~  
22 ~~operative beginning 60 days after issuance of the forms specified~~  
23 ~~in subdivision (m) by the Department of Corporations and the~~  
24 ~~Department of Financial Institutions, or on July 1, 2010, whichever~~  
25 ~~is later.~~

26 ~~SEC. 3. The provisions of this act are severable. If any~~  
27 ~~provision of this act or its application is held invalid, that invalidity~~  
28 ~~shall not affect other provisions or applications that can be given~~  
29 ~~effect without the invalid provision or application.~~